

SENATE BILL 3425

By Jackson

AN ACT to amend Tennessee Code Annotated, Title 39;
Title 47 and Title 48, relative to release of personal
consumer information.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 47, Chapter 18, is amended by inserting
Sections 2 through 4 below as a new, appropriately designated part thereto.

SECTION 2. As used in this section, unless the context otherwise requires:

(1) "Breach of the security of the system" means unauthorized acquisition of
computerized data that compromises the security, confidentiality, or integrity of personal
information maintained by the information holder. Good faith acquisition of personal
information by an employee or agent of the information holder for the purposes of the
information holder is not a breach of the security of the system, provided that the
personal information is not used or subject to further unauthorized disclosure.

(2) "Consumer reporting agency" means any person who, for monetary fees,
dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the
practice of assembling or evaluating consumer credit information or other information on
consumers for the purpose of furnishing consumer reports to third parties, and who uses
any means or facility of commerce for the purpose of preparing or furnishing consumer
reports. Consumer reporting agency does not include a private detective or investigator
licensed under the provisions of title 62, chapter 26.

(3) "Information holder" means any person or business that conducts business in
this state, or any agency of the state of Tennessee or any of its political subdivisions,
that owns or licenses computerized data that includes personal information.

(4) "Personal information" means an individual's first name or first initial and last name in combination with any one (1) or more of the following data elements, when either the name or the data elements are not encrypted:

(A) Social security number;

(B) Driver license number; or

(C) Account number, credit or debit card number, in combination with any required security code, access code, or password that would permit access to an individual's financial account.

"Personal information" does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records.

SECTION 3.

(a) Any information holder shall disclose any breach of the security of the system following discovery or notification of the breach in the security of the data to any resident of Tennessee whose unencrypted personal information was, or is reasonably believed to have been, acquired by an unauthorized person. The disclosure shall be made in the most expedient time possible and without unreasonable delay, consistent with the legitimate needs of law enforcement, as provided in subsection (c), or any measures necessary to determine the scope of the breach and restore the reasonable integrity of the data system.

(b) Any information holder that maintains computerized data that includes personal information that the information holder does not own shall notify the owner or licensee of the information of any breach of the security of the data immediately following discovery, if the personal information was, or is reasonably believed to have been, acquired by an unauthorized person.

(c) The notification required by this section may be delayed if a law enforcement agency determines that the notification will impede a criminal investigation. The notification required by this section shall be made after the law enforcement agency determines that it will not compromise the investigation.

(d) For purposes of this section, notice may be provided by one (1) of the following methods:

(1) Written notice;

(2) Electronic notice, if the notice provided is consistent with the provisions regarding electronic records and signatures set forth in Section 7001 of Title 15 of the United States Code; or

(3) Substitute notice, if the information holder demonstrates that the cost of providing notice would exceed two hundred fifty thousand dollars (\$250,000), or that the affected class of subject persons to be notified exceeds five hundred thousand (500,000), or the information holder does not have sufficient contact information. Substitute notice shall consist of all of the following:

(A) E-mail notice when the information holder has an e-mail address for the subject persons;

(B) Conspicuous posting of the notice on the information holder's internet website page, if the information holder maintains such website page; and

(C) Notification to major statewide media.

(e) Notwithstanding subdivision (d), an information holder that maintains its own notification procedures as part of an information security policy for the treatment of personal information and is otherwise consistent with the timing requirements of this section shall be deemed to be in compliance with the notification requirements of this

section if it notifies subject persons in accordance with its policies in the event of a breach of security of the system.

(f) Regardless of the method by which notice is provided, such notice shall include contact information for the information holder and a description of the categories of information that were, or are reasonably believed to have been, acquired by a person without valid authorization, including specification of which of the elements of personal information were, or are reasonably believed to have been, so acquired.

(g)

(1) In the event that any Tennessee residents are to be notified pursuant to this section, the information holder shall notify the attorney general as to the timing, content and distribution of the notices and approximate number of affected persons. Such notice shall be made without delaying notice to affected Tennessee residents.

(2) In the event that more than five hundred (500) Tennessee residents are to be notified concerning one (1) breach of the security of the system, the information holder shall also notify consumer reporting agencies as to the timing, content and distribution of the notices and approximate number of affected persons. Such notice shall be made without delaying notice to affected Tennessee residents. The attorney general shall furnish, upon request, a list of consumer reporting agencies required to be notified pursuant to this section.

SECTION 4.

(a) A violation of this part by an information holder that is a person or business entity, but that is not an agency of the state or any political subdivision of the state, constitutes a violation of the Tennessee Consumer Protection Act of 1977, compiled in part 1 of this chapter.

(b) For the purpose of application of the Tennessee Consumer Protection Act, compiled in part 1 of this chapter, any violation of the provisions of this part shall be construed to constitute an unfair or deceptive act or practice affecting trade or commerce and subject to the penalties and remedies as provided in that act, in addition to the penalties and remedies set forth in this part.

(c) If the division has reason to believe that a violation of this part has occurred, the attorney general and reporter, at the request of the division, may institute a proceeding under this chapter.

SECTION 5. This act shall take effect July 1, 2006, the public welfare requiring it.